

AUG 03 2016

Agenda Item # 10A

# PROPOSED OUTLINE

(WINERY APPLICATIONS)

PLANNING COMMISSION HEARING – (DATE)  
 CONDITIONS OF APPROVAL

(Project Name)  
 (Application Number(s) PXX-XXXX)  
 (Project Address)  
 (APN #XXX-XXX-XXX)

This Permit encompasses and shall be limited to the project commonly known as *Project Name*, located at (*Project Address*). Part I encompasses the Project Scope and general conditions pertaining to statutory and local code references, project monitoring and the process for any future changes or activities. Part II encompasses the ongoing conditions relevant to the operation of the project. Part III encompasses the conditions relevant to construction and the prerequisites for a final certificate of occupancy. It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved.

## PART I

- 1.0 PROJECT SCOPE
- 2.0 STATUTORY AND CODE SECTION REFERENCES (FORMER CONDITION 9.1)
- 3.0 MONITORING COSTS (FORMER CONDITION 9.2)

## PART II

- 4.0 OPERATIONAL CHARACTERISTICS OF THE PROJECT  
 Permittee shall comply with the following during operation of the winery:
  - 8.1 GENERAL PROVISIONS
  - 8.2 TOURS AND TASTINGS/VISITATION
  - 8.3 MARKETING
  - 8.4 ON-PREMISES CONSUMPTION
  - 8.5 RESIDENCE OR NON-WINERY STRUCTURES
  - 8.6 GRAPE SOURCE
  - 8.7 COMPLIANCE REVIEW
  - 8.8 RENTAL/LEASING
  - 8.9 GROUND WATER MANAGEMENT – WELLS
  - 8.10 AMPLIFIED MUSIC
  - 8.11 TRAFFIC
  - 8.12 PARKING
  - 8.13 BUILDING DIVISION – USE OR OCCUPANCY CHANGES

- 8.14 FIRE DEPARTMENT – TEMPORARY STRUCTURES
- 8.15 **(INSERT IF APPLICABLE) NAPA COUNTY MOSQUITO ABATEMENT PROGRAM**
- ADD GENERAL PROPERTY MAINTENANCE – LIGHTING, LANDSCAPING, PAINTING, OUTDOOR EQUIPMENT STORAGE
- ADD NO TEMPORARY SIGNS
- ADD COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES - OPERATIONAL CONDITIONS (FORMER 2.0)
- ADD **(INSERT IF APPLICABLE) OPERATIONAL MITIGATION MEASURES**
- 8.16 **(INSERT IF APPLICABLE) OTHER CONDITIONS APPLICABLE TO THE OPERATIONAL ASPECTS OF THE PROJECT**
- 9.3 **[OPTIONAL TO BE USED ONLY IF A MAJOR MODIFICATION] PREVIOUS CONDITIONS**

### PART III

#### 5.0 PAYMENT OF FEES - PREREQUISITE FOR ISSUANCE OF PERMITS (FORMER CONDITIONS 3.0 AND 4.8)

No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full. This includes all fees associated with plan check and building inspections, associated development impact fees established by County Ordinance or Resolution, and the Napa County Affordable Housing Mitigation Fee in accordance with County Code.

#### 6.0 GRADING/DEMOLITION/ENVIRONMENTAL/BUILDING PERMIT/OTHER PERMIT PREQUESITES

Permittee shall comply with the following with the submittal of a grading, demolition environmental, building and/or other applicable permit applications:

- 2.0 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES - PLAN REVIEW, CONSTRUCTION AND PREOCCUPANCY CONDITIONS
- 4.0 PRIOR TO ISSUANCE OF A GRADING PERMIT AND/OR BUILDING PERMIT
  - 4.1 BUILDING DIVISION – GENERAL CONDITIONS
  - 4.2 LIGHTING – PLAN SUBMITTAL
  - 4.3 LANDSCAPING – PLAN SUBMITTAL
  - 4.4 COLORS
  - 4.5 OUTDOOR STORAGE/SCREENING/UTILITIES
  - 4.6 TRASH ENCLOSURES
  - 4.7 ADDRESSING
  - 4.9 **(INSERT IF APPLICABLE) HISTORIC RESOURCES**
  - 4.10 **(INSERT IF APPLICABLE) DEMOLITION ACTIVITIES**
  - 4.11 **(INSERT IF APPLICABLE) VIEWSHED – EXECUTION OF USE RESTRICTION**
  - 4.12 **(INSERT IF APPLICABLE) MITIGATION MEASURES**
  - 4.13 **(INSERT IF APPLICABLE) PARCEL CHANGE REQUIREMENTS**
    - a. PARCEL MERGER
    - b. LOT LINE ADJUSTMENTS
    - c. EASEMENTS
  - 4.14 **(INSERT IF APPLICABLE) OTHER CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL**

**7.0 PROJECT CONSTRUCTION**

Permittee shall comply with the following during project construction

ADD General introduction statement regarding compliance with County Codes

**5.1 SITE IMPROVEMENT**

- a. GRADING & SPOILS
- b. DUST CONTROL
- c. AIR QUALITY
- d. STORM WATER CONTROL

**5.2 ARCHEOLOGICAL FINDING**

**5.3 CONSTRUCTION NOISE**

**5.4 (INSERT IF APPLICABLE) CONSTRUCTION MITIGATION MEASURES**

**5.5 (INSERT IF APPLICABLE) OTHER CONSTRUCTION CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL**

**8.0 TEMPORARY CERTIFICATE OF OCCUPANCY – PREREQUISITES (FORMER CONDITION 6.0)**

**9.0 FINAL CERTIFICATE OF OCCUPANCY – PREREQUISITES (FORMER CONDITION 7.0)**

**7.1 FINAL OCCUPANCY**

**7.2 SIGNS**

**7.3 GATE/ENTRY STRUCTURES**

**7.4 LANDSCAPING**

**7.5 (INSERT IF APPLICABLE) ROAD OR TRAFFIC IMPROVEMENT REQUIREMENTS**

**7.6 (INSERT IF APPLICABLE) DEMOLITION ACTIVITIES**

**7.7 (INSERT IF APPLICABLE) MITIGATION MEASURES APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY**

**7.8 (INSERT IF APPLICABLE) OTHER CONDITIONS APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY**



AUG 03 2016

Agenda Item # 10A



Mission: To Promote the Health, Welfare and Safety of our Community by Advocating for Responsible Planning to Insure Sustainability of the Finite Resources of Napa County  
**A Better Plan. A Better Future.**

August 2, 2016

Charlene Gallina, Supervising Planner  
Planning, Building & Environmental Services Department  
1195 Third Street  
Napa CA 94559

Re: Adoption of 2016 Standard Conditions of Approval, Item 10A, Napa County Planning Commission, August 3, 2016

Dear Ms. Gallina:

Napa Vision 2050 submits these comments on the proposed update to the standard conditions of approval for Wineries, Specific Plan Area- non Winery Applications and Other Project Non-Residential/Residential Applications. NV 2050 is a non-profit community association whose mission is to Promote the Health, Welfare and Safety of our Community by Admocating for Responsible Planning to Insure Sustainability of the Finite Resources of Napa County: **A Better Plan. A Better Future.**

We fully endorse the County's goals and proposals for updating the conditions of approval and we congratulate the planning staff for their work on clarity and transparency of the streamlined conditions and the triggering of project milestones and providing ease of use by contractors, engineers, the permittee, property owners, County Staff, Napa County Residents and Neighbors to the projects.

These new tools provide the Napa County PBES Staff and Enforcement group with the tools they need to cull out the oulandish before everyone becomes too invested in the outcome. These are not hard and fast rules to limit development, rather they are transparent compliance guidelines of workable conditions that trigger project milestones that all observers can understand and appreciate. Conditions of Approval are Project agreements between the permittee and the Napa County PBES staff, and they should be honored by all participants and observers.

Bernadette Brooks, in her email comments has provided excellent questions of guidance for the PBES Staff and Planning Commission and their rigorous analysis should be considered in the wording of the final draft to the Planning Commission on August 17, 2016.

Storm Water Control is vital to the project long term sustainability and compliance with the Water Board requirements in maintaining and acceptable TMDL rating for the rivers and tributaries inside the Napa Valley. A main project objective should be the protection and viability of the waterways and maintenance of Fish Friendly Farming objectives that provide clear, clean drinking water to the Municipal Reservoirs of Napa City, Yountville, Saint Helena, American Canyon and Calistoga. The Residents and youth within these municipal limits depend on this water for their Health, Welfare and Safety. The project objectives should never be placed ahead of these goals.

Thank you for the opportunity to comment.

Gary Margadant  
Napa Vision 2050

Attachments:

Bernadette Brooks Comments via email.  
Wine Industry Enforcement Letter March 3, 2015  
2014-2015 Grand Jury Wineries Following the Rules  
Napa Valley Register 8/28/2015 Grand Jury Forman Letter to the Editor  
Unfair Competition in the Wine Industry

# Napa County Development Process - Standard Conditions of Approval Update for Discretionary Projects

5 messages

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Gallina, Charlene <Charlene.Gallina@countyofnapa.org>

Wed, Jun 22, 2016 at 6:27 PM

To: "Gallina, Charlene" <Charlene.Gallina@countyofnapa.org>

Cc: "McDowell, John" <John.McDowell@countyofnapa.org>, "Morrison, David" <David.Morrison@countyofnapa.org>

Hello Regular Customers of Napa County Planning, Building and Environmental Services,

Most of you are likely aware that the last time we formally presented an update to our Standard Conditions of Approval for Winery and Other Project discretionary applications to the Planning Commission was in December of 2012. Attached, please find the proposed changes which we will be bringing to the Planning Commission on July 14<sup>th</sup> (a Special Planning Commission Meeting) or at their next meeting on July 20<sup>th</sup> for review and recommendation to the Board of Supervisors. Thereafter, the recommended Standard Conditions will be presented to the Board for their consideration and adoption. Please note that Commission and the Board of Supervisors will take public testimony on this item.

Please review and provide comment by July 6<sup>th</sup> if you want me to incorporate your comments into our staff report to the Commission or at least prior to July 14<sup>th</sup>. If we go on July 20<sup>th</sup>, I will need comments by July 12<sup>th</sup> to incorporate into the July 20<sup>th</sup> staff report. Please note that I will get back to you by July 1<sup>st</sup> on which meeting we will take this item.

As presented, staff is seeking comments on three (3) sets of Standard Conditions: Winery Applications, Other Project Non-Residential/Residential Applications, and Specific Plan Area (Napa Valley Business Park) Applications.

The proposed changes in these conditions are as follows:

Proposed Standard Conditions have now been reorganized into nine(9) project milestones:

1. Project Scope
2. Compliance with Other Departments and Agencies,
3. Payment of Fees as Prerequisite For Issuance of Permits
4. Prior to Issuance of a Grading Permit and/or Building Permit
5. Project Construction
6. Prior to Authorization of a Temporary Certificate of Occupancy
7. Prior to Issuance of a Final Certificate of Occupancy
8. Operational Characteristics of the Project
9. Miscellaneous

Proposed wording of the Standard Conditions have been modified to standardize language, ensure consistency and clarity, and to avoid any duplication. Furthermore, Staff has standardize project specific conditions that have been applied to projects over the years, and have added

conditions from the Building Division and Fire Department to provide more information regarding the permitting process and expectations when applying for such permits.

As for any significant changes, staff has renamed the "Well" condition to "Ground Water Management – Wells" and updated its language to address the County's Water Availability Analysis (WAA) Policy adopted by the Board of Supervisors on May 13, 2014. Lastly, Staff is proposing a condition and procedure that would carry over previous non-construction and/or operational conditions of approval for Major Modification applications only at this time.

If you have any questions, comments or suggested changes, please contact me or John McDowell.

Best Regards,

Charlene Gallina




Supervising Planner

Napa County Planning, Building, & Environmental Services Department

(707) 299-1355

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### 3 attachments

-  **DraftWineryConditions6-21-16.pdf**  
168K
-  **DraftOtherProjectConditions6-21-16.pdf**  
149K
-  **DraftSpecificPlanArea-Non-WineryConditions6-21-16.pdf**  
132K

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**Gary Margadant** <gsmargadant@gmail.com>

Wed, Jun 22, 2016 at 9:35 PM

To: Gary Margadant <gsmargadant@gmail.com>

Bcc: Bernadette & Walt Brooks <brooksvineyard@sbcglobal.net>, Bill Hocker <bill@wmhocker.org>, Carol Kunze <carol@tuleyome.org>, Charlotte Helen Williams <cdevorak@sonic.net>, Chris Malan <cmalan1earth@gmail.com>, Christina Aranguren <calfisheriestandwaterunlimited@gmail.com>, Christina Benz <christinabenz@gmail.com>, Cynthia Grupp <cfgrupp@gmail.com>, Daniel Mufson <NapaVision2050@gmail.com>, David R Heitzman <savecircleoaks@gmail.com>, Diane Dame Shepp <diane.dame.shepp@gmail.com>, Donald & Patricia Harms-Damery <pdamery@patriciadamery.com>, Eve Kahn <evekahn@juno.com>, Geoff Ellsworth <geoffellsworth@yahoo.com>, George Caloyannidis <calti@comcast.net>, Ginna Beharry <ginna.beharry@sbcglobal.net>, Jim Wilson <jplaudatosi@gmail.com>, John Harrington <john@harringtoninvestments.com>, Julia Winiarski <108julia@gmail.com>, Kathy L Felch <kfelch@adkinsfelch.com>, Kellie Anderson <kelliegato@gmail.com>, Mary Ann Moffitt <mamoffitt4@gmail.com>, Mike Hackett <mhackett54@gmail.com>, Nancy Tamarisk <napaquail@gmail.com>, Richard A Cannon <cannon\_richard@hotmail.com>, Richard Nieman <rniemann@sonic.net>, Dorian Greenow <dorian.greenow@me.com>, Evangeline James <ejames@pollockandjames.com>, Harris Nussbaum <nussbaum@napanet.net>, Leslie Stewart <ls@napa.us>, Russ Wilsey <russ@purityinc.com>, Tony McClimans <tlimclimans@gmail.com>



Team of Extraordinary Talent ..... This is a huge change in the Conditions of Approval that David M telescoped at the last PC/BOS meeting. In my view, he is trying to change the COA to include Milestones that require, over time a reorganization and emphasis of compliance before the Use Permit is Finalized. The COA will not wait until the end, rather it will be a integral part of the compliance regime to gain final approval of the Use Permit. If the COA items are not completed as required, then the Use Permit can be denied. Please look at the three versions and comment back. David wants support, so be generous. Charlene, David et al, are proposing a special meeting of the PC on July 14 (Thursday) or a following regular meeting on July 20, Wednesday, when Mountain Peak Vineyard is due to be considered. PUSH and VOTE for the SPECIAL meeting on this subject, we want the exclusivity.

Which of the 3 versions do you prefer? I have not read them and decided on a preference. I will forward my response.

If your brain is about to explode, lets meet for coffee.

Gary

Gary Margadant

Napa Vision 2050

H 707.257.3351

C 707.291.0361

[Quoted text hidden]

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**Tittel/Caloyannidis** <calti@comcast.net>

Thu, Jun 23, 2016 at 9:27 AM

To: Gary Margadant <gsmargadant@gmail.com>

Cc: C/ 2050 Charlotte Williams <cdevorak@sonic.net>, C/ 2050 Cynthia Grupp <cfgrupp@gmail.com>, C/ 2050 Dan Mufson <dan@apotherx.com>, C/ 2050 David Heitzman <napaguitar@gmail.com>, C/ 2050 Diane Shepp <protectruralnapa@gmail.com>, C/ 2050 Eve Kahn <evekahn@yahoo.com>, C/ 2050 Geoff Ellsworth <geoffellsworth@yahoo.com>, C/ 2050 Ginna Beharry <ginna.beharry@sbcglobal.net>, C/ 2050 Jim Wilson <jplaudatosi@gmail.com>, C/ 2050 Julia Winiarski <108julia@gmail.com>, C/ 2050 Kathy Felch <kfelch@adkinsfelchllp.com>, C/ 2050 Mike Hackett <mhackett54@gmail.com>, C/ 2050 Patricia Damery <pdamery@patriciadamery.com>, C/ 2050 Richard Cannon <cannon\_richard@hotmail.com>, C/ 2050 Tina Aranguren <calfsheriesandwaterunlimited@gmail.com>

Dear Gary,

We need to convene a NV 2050 meeting to discuss how we will proceed with this. It may have genuine benefits or it may be a smokescreen.

George

**From:** Gary Margadant [mailto:gsmargadant@gmail.com]

**Sent:** Wednesday, June 22, 2016 9:36 PM

**To:** Gary Margadant

**Subject:** Fwd: Napa County Development Process - Standard Conditions of Approval Update for Discretionary Projects

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**Walt Brooks** <brooksvineyard@sbcglobal.net>

Mon, Jul 11, 2016 at 9:12 PM

Reply-To: Walt Brooks <brooksvineyard@sbcglobal.net>

To: Charlene Gallina <charlene.gallina@countyofnapa.org>

Cc: Gary Margadant <gsmargadant@gmail.com>

Hello Charlene,

I was forwarded a copy of the newly proposed COA and have some comments below on the COA for Winery.

But first let me say that I am glad that conditions will be checked along the whole project process and

thank you for the improved clarity of the new document. If you have any questions about my comments please let me know.

Thank You,

Bernadette Brooks

#### Section 1.0

1.3 a. and b. - I think a definition of what is accessory vs production is needed somewhere for reference.

1.3 d. - refers to section 8.2 but I think that changed and should be 8.2 and 8.3

1.3 e. - should refer to COA 8.4, not 8.3

1.3 g. - Is this maximum number of employees on site at any one time? Or maximum employed, full-time, part-time and contract? I think it is important to consider longterm contract employees in the employee counts.

1.3 - should there be a description of Ag acreage loss?

#### Section 4.0

4.3 c. - Removal of Oak trees replaced 2.1 need to be ensured survival and some limit on size of tree that is allowed to be removed at all.

4.12 Mitigation measure monitoring needs to include the frequency of monitoring.

4.13 - I think there needs to be a check on notification of nearby neighbors (currently 1000 ft or touching parcels I believe) and if any part of the project involves an easement then show that the neighbor who gave the easement is aware and ok with the project as described or that the courts have decided that the project has the right to continue.  
( I am not sure if this is the same as being recorded?)

#### Section 6.0

6.1 - states " TCOs should not be used for the occupancy of hospitality buildings" but I think should also state or for hospitality use anywhere on the site as someone could use their production facility or caves for hospitality.

#### Section 7.0

7.4 - Landscaping needs to be low water and maintained Bay-Friendly.

#### Section 8.0

8.1 - The county needs a way to determine if the food service is incidental and cost recovery only. Is there a separate accounting that can be checked at audit time?

8.2 d. - The county should state that visitation hours can be no greater than between 10 AM and 10 PM.

8.2 e. - references itself and typo ?

- I have never been asked to sign a log book , this seems to me a very unreliable accounting of the number of people visiting at a winery. Tickets sold to a marketing event maybe a good thing.

8.3 d. - How are cultural or social events, like having a concert or wedding educational AND incidental ?

I may have to drink the wine from the winery so " somewhat educational" but no way incidental! I think these are special events and should be regulated as such.

All activity including cleanup should cease by 10 PM, not a choice.

8.5 - Residences on winery site should have to show rental records if pre-existing and if new when audited.

8.9 a. - Perhaps an example of a well monitoring report would be helpful.

What about quality checks periodically to ensure healthy, potable water?

What about concerns/reports from neighbors of impact on their water supply, any way to trace connectivity?

8.9 b. - Are well-drillers logs or water trucks delivery tags required to be cross-checked with parcel permits?

How will Planning monitor this?

8.9 c. - What does "winery" mean here, just new/mod described in the permit request or for the whole parcel?

Should this also refer to the WAA submitted with the project and states allowance is based on the numbers submitted in the WAA, if WAA found faulty then allowable water draw can be changed?

8.16 - Require new and major modifications in the AW to register and complete Napa Green certification.

[Quoted text hidden]

### 3 attachments

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168K

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149K

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**Walt Brooks** <brooksvineyard@sbcglobal.net>  
Reply-To: Walt Brooks <brooksvineyard@sbcglobal.net>  
To: Charlene Gallina <charlene.gallina@countyofnapa.org>  
Cc: Gary Margadant <gsmargadant@gmail.com>

Mon, Jul 11, 2016 at 9:15 PM

Hi Charlene,

Sorry I forgot to add two more items:

- If there are other pre-existing illegal and non-compliant structures or issues with a parcel that are not remedied by the new permit request then those need to be resolved before the new permit can be issued.
- If there are pending legal actions by Napa County on the requestor or business owner then that needs to be resolved before the new permit can be issued.

Thanks,  
Bernie

# Unfair Competition in the Wine Industry

7/30/2016

by

Nell Clement,

Jessica Nall

| Farella Braun + Martel LLP

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FARELLA  
BRAUN + MARTEL LLP

Published in the July-August 2016 issue of *Vineyard & Winery Management*

California counties are increasingly using California's Unfair Competition Law (UCL) to bring government enforcement actions against local businesses for myriad reasons. California's UCL is extremely broad, encompassing unlawful, fraudulent or even unfair business practices. UCL cases can often result in large fines and costs — as well as reputational damage from negative publicity.

Local district attorney and county counsel offices in winemaking regions are increasingly using the UCL to bring cases against wine industry businesses. These cases have addressed a wide range of conduct, from minor county code violations to alleged serious health and safety risks.

UCL cases filed against wineries and vineyards have included allegations of grading and vegetation removal outside of the erosion control plan approved by the county. In one case, this resulted in a total cost to the winery of \$20,000. Another case involved allegations of a winery letting paid guests stay on its property in violation of local zoning ordinances, resulting in a total cost to the winery of more than \$30,000. A third case involved allegations of a winery doing construction on its property, including building a wine cave without proper permitting, resulting in a total cost to the winery of \$85,000. Other cases involving fish and game violations on winery property have also resulted in five-figure settlements. These costs only represent the amounts paid to settle the case. They don't include the costs to the businesses in attorney's fees (which can be high) or the reputational costs due to negative publicity resulting from the lawsuits.

## Scope of California's UCL

Codified in Sections 17200 and 17500 of the California Business & Professions Code, California's UCL is essentially a consumer protection law, providing government entities and private citizens the ability to bring lawsuits against businesses for practices that are alleged to harm consumers. It's one of the

broadest, if not the broadest, consumer protection laws in the country — and it includes expansive definitions, creating potential liability for a wide range of business conduct.

The UCL prohibits four types of wrongful conduct by businesses: unlawful business acts or practices; unfair business acts or practices; fraudulent business acts or practices; and unfair, deceptive, untrue or misleading advertising.

Under the UCL, an “unlawful” business act or practice is one that violates any law, be it federal, state, local, statutory or court-made. The UCL borrows violations of other laws and treats them as unlawful practices that are independently actionable. For example, “unlawful” UCL cases have been brought based on county code violations, zoning ordinances, building and housing code violations, and environmental statutes, such as the California Fish & Game Code.

“Unfair” under the UCL is intentionally broad to allow law enforcement agencies maximum discretion to take action against new schemes to defraud consumers that may not yet violate any law. The California courts have disagreed on one definition of “unfair” and have held a wide variety of practices to be “unfair” under the UCL. Examples include a car rental company concealing a refueling service charge, even though charging such a fee itself was legal; an insurance company’s use of a polygraph test to deny insurance; and intentionally placing unenforceable terms in consumer contracts.

A business act or practice is “fraudulent” under the UCL if members of the public are likely to be deceived by that act or practice. “Fraudulent” under the UCL is broader than common law fraud because UCL liability doesn’t require intent, reliance, damages or even actual deception — rather, the mere likelihood of deception is sufficient.

### **Government Enforcement**

UCL government enforcement actions can be brought by a number of law enforcement officials, including the California Attorney General, county district attorneys, county counsel and city attorneys. Given this broad and potentially overlapping number of law enforcement officials who can investigate and prosecute UCL actions, there’s an unfair competition database allowing for coordination between agencies. In addition to civil discovery methods that may apply to private UCL actions, law enforcement officials can use administrative subpoenas and other investigative techniques — such as wiretap surveillance — in UCL investigations and actions.

For both government enforcement and private actions, the standard of proof in UCL actions is preponderance of the evidence. The preponderance of the evidence standard is relatively low and is met if the plaintiff (whether the government or a private litigant) shows that it’s more likely than not that the defendant engaged in a business act or practice that violates the UCL.

Successful government UCL enforcement actions have a number of potential remedies, including injunctions, requiring cessation of the violative practice or act, and restitution or reimbursement for victims’ losses due to violative conduct.

Additionally, the government can seek civil monetary penalties and investigation costs. The maximum allowable civil monetary penalty under the UCL is \$2,500 per violation. This may not sound like much, but calculation of the number of violations can increase the fine exponentially. For example, in many counties,

each day on which a violation of the county code is in existence is considered a separate and distinct violation for penalty purposes.

The ability to obtain civil monetary penalties, especially in such large amounts, provides a powerful incentive for law enforcement agencies to bring UCL cases, because any penalty paid goes directly to the agency that investigated and prosecuted the action. UCL cases provide an alternate way to fill the agency's coffers at a time when budget cuts and lack of funding plague many law enforcement agencies.

### **How to Avoid Becoming a Target**

Because UCL liability is so broad in scope and can apply to such a wide range of conduct (including minor county code violations), these investigations and cases may be difficult to avoid. However, there are actions a business owner can take in an attempt to avoid a UCL investigation or government enforcement action.

**Know and comply with state and local ordinances**, including county permitting, building and zoning requirements. These ordinances and the requirements pursuant to them can be complicated, and dealing with state and county agencies can be frustratingly slow. However, the risk of noncompliance, given the UCL penalties and costs, can be enormous. Consider hiring a consultant or advisor to help navigate state and local ordinance issues.

**Supervise and educate employees about compliance with state and local ordinances.** Businesses can and will likely be held vicariously liable for any conduct of their employees who are considered to be acting within the scope of their employment. An employee is considered to be acting within the scope of his or her employment if the conduct is reasonably related to the tasks the employee was hired to perform or the employee's conduct was reasonably foreseeable in light of the employer's business or the employee's job responsibilities. Consider educating employees as well about potential government investigative tactics such as issuance of subpoenas, questioning by government investigators, and even "sting operations" in which government enforcers may misrepresent their identities in an attempt to ferret out code violations. Don't assume independent contractors will take responsibility for getting necessary and required permits. **As the business owner, you are ultimately responsible for making sure your business and the property on which it operates are in compliance with state and county ordinances and laws.** Ask to see all the authorized permits and necessary certificates — don't just take your independent contractors at their word.

**Be nice to your neighbors.** A significant portion of UCL investigations begin with a neighbor complaint to a state, county or local agency. If there are issues with your business' neighbors, try to address and resolve them directly.

### **What to Do If Targeted**

There are several steps you should take to mitigate the potential damage to your business if you're the target of a UCL investigation.

Engage counsel to act on your behalf. Counsel experienced in defending UCL actions and negotiating with the investigating agency can help formulate and execute a strategy to resolve the investigation or case with the best possible outcome for your business — financially and reputationally.

Don't make any statements to investigating agencies without consulting with your counsel. Any statements you or your employees make directly to agencies investigating a UCL case can be used against you in that case and can potentially get your business in more trouble, especially if the investigating agency thinks the statements are false or misleading in any way. An attorney can talk to the investigating agency and negotiate on your business' behalf without creating statements that bind or can be attributable to your business.

Counsel will also be able to advise you in responding to government agency requests, including administrative subpoenas. Although not necessarily tied to a filed lawsuit, administrative subpoenas should be treated like any formal civil discovery request, with responses stating and preserving all objections and potential privileges.

Remember that cooperation is valuable. Demonstrating to an investigating agency that you're willing to cooperate and work with the agency to resolve UCL issues can go a long way in resolving an investigation before it becomes a lawsuit or, if a lawsuit is already filed, resolving the case outside of court. Out-of-court resolutions often involve the government agency agreeing to take a much-reduced civil penalty to resolve the case than could be sought in a court judgment. As soon as you learn about a UCL investigation or lawsuit affecting your business, have your counsel consider the benefits of cooperation. If those benefits weigh in your business' favor, engage with the investigating agency on the topic of cooperation as soon as possible.

With its broad applicability and low standard of proof, the UCL provides a powerful tool for government entities to enforce state and local ordinances and to obtain civil penalties for their often underfunded agencies. The best practices to avoid UCL investigations and lawsuits is to be vigilant about state and local ordinance compliance as well as potential investigations and to supervise and educate your employees to do the same.



Napa Valley Register  
Wine industry should work for transparency

AUGUST 28, 2015 7:00 PM • ROSS WORKMAN

The discussion of what rules wineries should live with regarding production and visitation limits is complicated. But some salient factors seem self-evident. The rules should be obeyed. The forthright policy of the Napa Valley Vintners Association is hard to argue with. They say wineries should comply with their use permits or other regulations and, if they cannot or don't want to comply, they should seek to have them amended. Agreement that the rules should be obeyed is a good place to start. Nobody seems to be willing to disagree, at least not publicly. Secondly, the rules frequently appear to have not been obeyed. The county's audit of winery compliance has been anything but transparent. The terms of winery use permits are not visible to the public on the county's website. The small sample of 20 wineries per year that have been audited have not been publicly named. But we do know that in recent years up to 40 percent of them have been found to not comply. No instances of 100 percent compliance in any recent audits have been reported. Third, some of the rules would appear to involve factors easy to measure. Volume of wine production and number of visitors and events look like objective facts. And they are facts the wineries certainly must know. Wine production is taxed by the federal government, so there have to be auditable production numbers readily available. Almost every winery charges visitors for tastings, and it is doubtful they often host events without a charge. So the business records of the wineries contain the data from which they should be able easily to extract the numbers to show whether they are complying with limitations on visitors and events. Fourth, compliance with rules can be expected to improve if there are consequences for non-compliance. It seems to work very effectively with health department regulations of restaurants that can be shut down for non-compliance. And shutting down is almost never required because the publication of a failure to comply pressures an immediate response. But the names of non-compliant wineries are kept secret from the public.

Publishing the names of non-compliant wineries would seem a modest, but beneficial, consequence of failure to comply. Similarly, requiring full compliance with existing rules before accepting an application to change the rules would seem to encourage compliance, without an undue burden. And, in extreme cases, a temporary suspension of visitation rights would get any winery's attention and not be a death sentence. As to the permitting of additional new wineries, there also appear to be a few unarguable facts. Is there any doubt that existing wineries in Napa Valley have the present installed capacity to process 100 percent of the wine grapes produced in the valley? On the contrary, the regulatory problem seems to be in preventing Napa Valley wineries from unduly relying on grapes from non-Napa sources. So incremental wineries are not necessary to preserve and enhance Napa Valley agriculture. They are proposed and built for other commercial reasons than protecting local agriculture. Those commercial reasons are certainly legal, but we should be clear that the incremental wineries are commercial enterprises, not agricultural industry protectors. They are wine marketing outlets and event center enterprises first, and unnecessary processors of Napa Valley grapes second.

As to traffic problems, the argument is made that the visitors to a new winery will not be incremental drivers on Napa roads; they will be drivers who would be here anyway to visit other wineries if the new winery were not built. The traffic problem, we are told, is not new visitors the new winery brings into the valley; the problem is created by people already living and working here.

That does, however, conveniently overlook the obvious fact that the new winery/event center will create incremental jobs for people working there and also for people providing services to the enterprise. Those new jobs will be filled, at the margin, by new travelers on Napa roads, apart from the visitors who come to the winery. And, it is clear that, given the cost of housing here, many of those incremental employees will come from outside the valley and will add to traffic congestion as they go to and from work. It is not possible for added commerce of a staffed and operating new winery to occur without an impact on traffic. Failing to recognize that is disingenuous sleight of hand.

I am not personally opposed to wineries. Since moving to Napa 20 years ago, I have

NVR 082815 Wine Ind Transparency.txt

worked part-time in a number of wineries. I believe the wine industry is well served by complying with existing rules, as the Napa Valley Vintners Association recommends, and by openly embracing changes in the way wineries relate to the county.

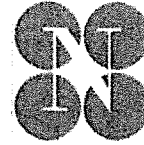
The industry has a great store of well-deserved goodwill and can best continue to enjoy the widespread public support that it has by working to open up public visibility of its operations. Sunshine will inoculate against uninformed criticism and, perhaps, unwanted new regulation.

Workman lives in Napa. He served as the foreman of the 2014-15 Napa County grand jury, though the views expressed here are his own.

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WINEGROWERS  
of napa county



napa valley vintners

March 3, 2015

Supervisor Diane Dillon  
Planning Commissioner Heather Phillips  
Napa County Administration Building  
1195 Third Street  
Napa, Ca 94559

Dear Chairwoman Dillon and Chairwoman Phillips,

We the undersigned Presidents offer our collective perspective on issues currently under discussion at the County and within our community at large.

The Napa Valley Grapegrowers, the Winegrowers of Napa County, and the Napa Valley Vintners encourage the County to exhibit leadership in navigating the complexity of these issues and in defining the future vision of Napa. Napa County has carefully enacted comprehensive policies and regulations in place to protect our resources and ensure a strong future. We encourage the County to enforce these regulations and follow through on its General Plan policies. We believe that unrealistic winery applications, shored up by the excessive use of variances, should be denied. We do not favor or encourage a moratorium. Strict oversight of existing procedures, paired with fewer creative solutions to non-conforming parcels, will go a long way toward diminishing community and industry concerns. We further request continued attention be paid to the enforcement of food and wine pairing accessory use at wineries.

There has been much discussion of establishing guidelines or using a 'conceptual matrix' when balancing parcel size or acreage with production and visitation. We formally offer our assistance in helping the Planning Department establish these guidelines with an eye to sensible and sustainable development. In addition, we are willing to meet with any community groups, organizations or municipalities to broaden our mutual understanding. We are not suggesting hard and fast rules to limit development, but merely a sincere effort to cull out the outlandish before everyone becomes too invested in the outcome.

We sincerely appreciate your leadership in these complex discussions. Opposition to all development is not the answer. We commit to continuing our support of Napa County leadership, to ensure the preservation of Napa's Agricultural Preserve and along with that, the Napa brand which we all hold dear.

Sincerely,

Steven P. Moulds  
Napa Valley  
Grapegrowers

Tony LeBlanc  
Winegrowers  
of Napa County

David R. Duncan  
Napa Valley Vintners





**NAPA COUNTY GRAND JURY  
2014-2015**

**MAY 12, 2015**

**FINAL REPORT**

**ARE NAPA COUNTY WINERIES  
FOLLOWING THE RULES?**



1 **ARE NAPA COUNTY WINERIES FOLLOWING THE RULES?**

2 **SUMMARY**

3 The Grand Jury undertook an investigation to determine if the Napa County  
4 Planning Department is issuing winery use permits that conform to the  
5 requirements of the Winery Definition Ordinance (WDO), which regulates wineries  
6 located within the Napa County Agriculture Preserve. The Grand Jury also  
7 investigated if the Planning Department is adequately monitoring the compliance  
8 of the wineries with their use permit requirements.

9 Wineries and the attendant vineyards are Napa County's largest industry providing  
10 the most jobs and greatest economic impact on the county. Wineries have been  
11 present since the earliest Europeans settled in the region, but the growth of  
12 wineries and the expansion of existing wineries have dramatically increased their  
13 footprint in the county in recent years. Increasing public concern over the impact  
14 of winery growth on traffic, water resources, and other quality of life issues has  
15 been expressed in the news media and in public hearings.

16 The approvals of new wineries and winery expansions are regulated through use  
17 permits issued by the County and are administered by the County Planning  
18 Department. The Planning Department is also charged with enforcing winery  
19 compliance with the conditions of their use permits. Wineries established before  
20 the enactment of the current regulations are to some extent exempt from these  
21 regulations, but if these wineries expand, the current regulations do apply. Public  
22 concern has also been expressed about the lack of transparency in winery  
23 compliance with their use permit conditions.

24 The number of wineries in Napa County is growing. According to data published  
25 by the Planning Department, in the seven-year period ending in 2013 a yearly  
26 average of 18 use permits were approved. These use permits authorized an  
27 average of eight new wineries each year, plus 10 winery expansions allowing  
28 approximately 180,000 gallons of additional wine production. There was an  
29 attendant approval of about an additional 28,000 visitors for tasting and 3,000  
30 visitors for marketing events for each year.

31 The focus of this investigation was to determine if the Planning Department has  
32 followed the guidance of the WDO in issuing use permits and if the winery audits

33 are sufficient to determine if the wineries are in compliance with their use permit  
34 requirements.

35 The Grand Jury concluded that the planning staff does a conscientious job of  
36 reviewing use permit applications for new wineries and for winery expansions to  
37 ensure their conformance with the WDO and the Napa County General Plan.  
38 Because of the number of applicants and the complexity of the permitting process,  
39 the length of time to obtain a permit frequently requires a year or more. The  
40 applicants bear the costs of the staff's time required to issue permits.

41 The Napa County Planning Department also has the responsibility for auditing the  
42 compliance of the wineries with their use permit conditions. The Grand Jury also  
43 concluded that the code enforcement staff is doing a professional job in its audit  
44 and compliance function in so far as their limited resources permit. There has been  
45 approximately 30% of one code enforcement inspector devoted to auditing winery  
46 compliance. An additional code enforcement inspector was added to the staff in  
47 January of 2015, but will have a range of duties other than winery audits. The  
48 Grand Jury reviewed the audit results of winery compliance with their use permits  
49 for calendar years 2011-2013.

50 The investigation revealed that only 20 wineries are audited each year out of the  
51 approximately 467 wineries in the Napa County winery database. In the audits of  
52 2011-2013 from 30% to 40% of the wineries audited were not in compliance for  
53 one or more requirements of their permits. The audits are limited in scope and all  
54 conditions specified by the use permits are not reviewed. This coupled with the  
55 relatively small number of wineries audited may not give a full picture of  
56 compliance.

57 The Grand Jury urges that the number and scope of the audits be increased to give  
58 a broader indication of compliance with the WDO even though this may require  
59 more code enforcement staff than currently employed. The identifications of the  
60 wineries that are audited are not released. The Grand Jury also urges that the  
61 names of non-compliant wineries be released to give greater transparency to the  
62 process and to raise public awareness.

63 Finally, the Grand Jury urges the Board of Supervisors and the Planning  
64 Commissioners to determine whether the WDO as written provides the regulatory  
65 framework necessary to maintain a winery industry that is consistent with the  
66 Agriculture Preserve Ordinance.



67

68 **GLOSSARY**

69 Ag Preserve: Agriculture Preserve of Napa County, Ordinance 274 of April  
70 9, 1968

71 General Plan: Napa County General Plan of 2007

72 TTB: Federal Alcohol and Tobacco Tax and Trade Bureau

73 WDO: Collective term for the Winery Definition Ordinances

74 Winery Definition Ordinance, Ordinance NO. 947 January 23,  
75 1990

76 Winery Definition Ordinance, Ordinance NO. 1340 May 11,  
77 2010

78 **BACKGROUND**

79 **AGRICULTURE PRESERVE OF NAPA COUNTY**

80 Concerned that residential and commercial development would slowly overwhelm  
81 the agricultural nature of Napa County, in 1968 the Board of Supervisors passed a  
82 landmark-zoning ordinance that created the first Agricultural Preserve in the  
83 United States. This ordinance reflected a commitment to agriculture as the  
84 “highest and best use” of most of the land outside of the local towns and the city of  
85 Napa. The ordinance dictated that the only commercial activity allowed in these  
86 areas was agriculture and, furthermore, set minimum lot sizes that prevented  
87 fragmentation of existing parcels, thus limiting the potential for development. The  
88 pertinent sections of the Agricultural Preserve Ordinance have been incorporated  
89 into the “Agricultural Preserve and Land Use” elements of the General Plan. The  
90 County’s General Plan is the official policy statement of the Board of Supervisors  
91 and serves as a broad framework for guiding the development of Napa County.

92 **THE WINERY DEFINITION ORDINANCE (WDO)**

93 Wineries had been allowed in the Ag Preserve. But, with the ensuing pace of  
94 winery development in the county, it became clear that specific winery definitions  
95 were necessary as to what sorts of activities would be allowed in wineries to  
96 comply with the Agriculture Preserve Ordinance. To accomplish this, the County  
97 Board of Supervisors passed the WDO, Ordinance No. 947, in 1990. This

98 ordinance set out regulations and required a use permit for all wineries established  
99 after July 31, 1974. Wineries that were established before this date and were  
100 operating in a legal fashion could continue operation without a use permit.  
101 However, any expansion beyond the level that existed before July 31, 1974, would  
102 require obtaining a use permit.

103 The WDO regulates many facets of a winery's operations and design, including  
104 size, location, signage, availability of tours and tastings, production capacity, grape  
105 sourcing, special events, and retail sales. It also regulates the accessory uses of the  
106 winery facilities for promotion and marketing of wine. The WDO defines certain  
107 other activities that may be present on the winery property such as farm labor  
108 housing and day care for children, but does not allow non-winery related  
109 commercial development.

110 With some important qualifications, the WDO defines a winery as a business that  
111 makes wine. Specifically, it says a winery is an "agricultural processing facility"  
112 for "the fermenting and processing of grape juice into wine." The WDO allows for  
113 wineries to sell and market wine, but such marketing activity must be "accessory"  
114 and subordinate to production. The maximum square footage of structures devoted  
115 to accessory uses related to the winery must be 40% or less than the area used for  
116 wine production.

117 With the principal goal of preserving Napa County's agricultural lands, as well as,  
118 providing a reliable market for its agricultural products, the WDO dictates that new  
119 wineries or any expansion of existing wineries after January 23, 1990, must source  
120 at least 75% of their grapes from Napa County. Wineries that were established  
121 prior to this date, but obtained a use permit to expand their production must also  
122 use at least 75% Napa County grapes for the additional wine produced from the  
123 expansion.

124 The WDO was amended in 2010 by County Ordinance NO. 1340 to address  
125 certain issues related to the marketing of wine and the sale of other items in the  
126 wineries. Specifically covered in this ordinance are: the marketing of wine, food,  
127 and wine pairings conducted as part of "tours and tasting" and the sale of wine and  
128 wine related products at the winery. Retail sales of non-wine related products were  
129 prohibited.

130

## 131 **WINERY USE PERMITS**

132 As a result of the WDO, wineries that were established after July 31, 1974, were  
133 required to obtain a “use permit.” Wineries that legally existed before July 31,  
134 1974, did not require a use permit to continue operation. These wineries are  
135 considered to be “grandfathered in” as to their production and marketing activities.  
136 However, any modification of a pre-July 31, 1974 winery’s activities or expansion  
137 of its production of wine required a use permit conforming to the WDO. There is,  
138 however, no legal limit on the number of wineries operating in the county.  
139 The WDO established a minimum parcel size of 10 acres for new wineries, but  
140 recognized that many legally existing wineries were on smaller parcels. For these  
141 “small wineries” the WDO specified that a “Certificate of Exemption” must be  
142 obtained. Any expansion of the “small wineries” however, required that the  
143 winery proceed in accordance with the requirements of the WDO ordinance.

## 144 **METHODOLOGY**

145 The Grand Jury undertook a series of interviews with the Napa County Planning  
146 Department and Code Enforcement executives and working level professionals.  
147 Interviews were also conducted with a planning commissioner and a county  
148 supervisor. Additional interviews were held with a number of independent  
149 consultants and engineers who support and guide winery use permits applications  
150 with the county planning staff. The Napa Valley Vintner’s staff was another  
151 valuable source of information on the winery industry in Napa County. The Grand  
152 Jury also attended a public hearing of a joint session of the Supervisors and the  
153 Planning Commissioners that heard over 60 comments from the public on the wine  
154 industry and its impact on the community.

155 In every case, all information and facts in this report were confirmed by a second  
156 source and in many cases by multiple sources unless otherwise noted in the report.  
157 Valuable insights to the audit process were gained by reviewing the Code  
158 Enforcement audit reports for wineries for calendar years 2011-2013. The WDO  
159 provided a framework for understanding winery regulations and the winery  
160 permitting process. The Napa General Plan provided general guidelines for the  
161 planned pace of winery and vineyard development in the County.

162

163 **DISCUSSION**

164 **USE PERMITS**

165 Use permits for new wineries or winery modifications are under the jurisdiction of  
166 the Napa County Planning Department. Applicants for winery permits are required  
167 to provide a detailed description of their winery business including the number of  
168 employees, maximum production rate, number and description of winery  
169 structures, and marketing programs. The reviews by the Planning Department are  
170 thorough and time consuming and frequently require 9 to 12 months or more  
171 before a permit is issued. The applicant bears the cost of the reviews.

172 Although the details of all winery permit applications are reviewed and vetted by  
173 the Planning Department, the final decision on approval or disapproval is the  
174 responsibility of the Napa County Planning Commissioners. The meetings of the  
175 Planning Commissioners are open to the public. If there is an aggrieved party to  
176 the issuance of a permit, the application may be brought before the County Board  
177 of Supervisors. The County Zoning Code does, however, define certain minor  
178 modifications to use permits that may be approved directly by the Planning  
179 Department without the involvement of the Planning Commissioners.

180 There has been considerable discussion in the local press and the community about  
181 opposition to certain winery and vineyard projects in the Valley and the impact of  
182 the industry's growth on traffic, the environment and other quality of life issues.  
183 These public concerns pose the question as to whether the WDO should be revised  
184 to moderate the growth of wineries. The planning staff was clearly sensitive to this  
185 public discourse and appeared to be proceeding cautiously in approving new use  
186 permits.

187 Considerable effort was expended to determine the actual number of wineries in  
188 the county. The Planning Department's public data indicates that there are 467  
189 wineries that have been issued use permits, but this does not include all wineries.  
190 Part of the difficulty in estimating the number of wineries is due to the number of  
191 "virtual wineries". These are wineries that do not own their own crushing and  
192 processing equipment, but use "brick and mortar" wineries to provide these  
193 services under contract. Use permits for wineries, however, "go with the land" and  
194 must include the production total for both their own wine and the wine of any  
195 custom crushing that the winery performs for virtual wineries.

196 Another source of uncertainty is that wineries that were established before July 31,  
197 1974, do not require a use permit unless they have applied for a permit to expand.  
198 Wineries in commercial areas not subject to agricultural land use zoning are also  
199 not included. These wineries are not included in the County database. The Federal

200 Alcohol, Trade and Tax Bureau, (TTB) which taxes the alcohol content produced  
201 by all wineries reported that there were 603 wineries in Napa County in 2014.  
202 (There are other estimates of the number of wineries from the State Alcohol  
203 Beverage Control Board and the Napa Valley Vintners membership and the  
204 planning staff has estimated that the number of wineries with separate labels and  
205 addresses could be as high as 1,260.) These differences in winery count between  
206 the County database, the TTB, and the other organizations are apparently due to  
207 the following:

- 208     ▪ Virtual wineries are not included in the County database.
- 209     ▪ Wineries in the County's municipalities have their own land use-zoning  
210       requirements and are not included in the County database.
- 211     ▪ Wineries in commercial or industrial zoned districts are not under  
212       agriculture land use zoning and would not be included in the County winery  
213       database.

214 The Planning Department is in the process of developing a more comprehensive  
215 winery database.

216 A number of consultants who support the wineries in applying for and obtaining  
217 use permits were interviewed and were very informative in evaluating the  
218 application process from the standpoint of the wineries in cost, time, and  
219 effectiveness. In their view, the time required to apply for and receive a permit has  
220 increased significantly. Since the applicant bears the cost, it has grown  
221 considerably more expensive to obtain a permit.

222 Although there has been public concern expressed in the public media about the  
223 impact of winery expansion in the City of Napa and other County municipalities,  
224 this investigation did not review the winery use permit and audit process for these  
225 municipalities

226 The number of wineries and the production of wines is growing. According to data  
227 published by the Planning Department for the seven-year period ending in 2014,  
228 there was an average of 18 new use permits issued each year, of which an average  
229 of eight are for new wineries. These use permits authorized an average production  
230 of approximately 180,000 gallons of additional wine per year. The attendant  
231 number of visitors is also growing. The new use permits for this period also  
232 authorized an average of about 28,000 additional visitors each year for tasting  
233 rooms and an average of 3,700 visitors for marketing events. It should be noted  
234 that all wineries do not necessarily produce the amount of wine allowed or have as  
235 many visitors as specified by their use permit.

236

237 **WINERY AUDITS**

238 The Code Enforcement staff is part of the Planning Department and is responsible  
239 for auditing winery compliance with their use permit requirements. Approximately  
240 30% of one code enforcement staff member's time has been devoted to winery  
241 audits.

242 The Planning Commissioners directed the Planning Department to initiate an  
243 annual "spot" audit of winery production in 2005. The Planning Commission began  
244 the production review by randomly selecting 20 wineries by blind draw. Prior to  
245 2009, only six wineries from the original 20 selected were audited, but since 2009  
246 all of the 20 wineries selected have been reviewed.

247 In 2010, the Planning Department broadened the scope of the audits and began  
248 reviewing tours and tastings log books and marketing events for all wineries drawn  
249 in the audit. The audit determined how the information was recorded and whether  
250 they were in compliance with the use permit conditions regarding visitations.  
251 Goods for sale in the tasting rooms were reviewed to determine if they met the  
252 definition in the WDO to allow only the sale of "winery related items."

253 Beginning in 2011, grape sourcing data were reviewed for each winery to  
254 determine if they were in compliance with the 75% Napa County grape  
255 requirement for Napa Valley wineries subject to the WDO. This information is  
256 available since all California wineries are required to submit grape sourcing  
257 information to the State of California's Department of Food and Agriculture.  
258 Information on winery production may also be checked against the data from the  
259 Federal Alcohol and Tobacco Tax and Trade Bureau, (TTB), which taxes the  
260 production of alcohol.

261 Winery audits are performed on a seven-year cycle such that if a winery is deemed  
262 to be in compliance it will not be subject to another audit for at least seven years.  
263 Wineries that are not in compliance are audited again the following year.  
264 However at this rate of 20 winery audits per year out of the County's database of  
265 approximately 467 wineries, it will take decades before all wineries have been  
266 audited and are audited again.

267 Winery audits review the following activities:

268 Is wine production within the limits of the use permit?

269 Is grape sourcing compliant with the 75% Napa County grapes requirement?

270 Are the number of tours and tasting events within permit requirements?

271 Are the number of marketing events within the permit limits?

272 Are all the products for retail sale wine related?

273 Winery audits do not review the following:

274 Water usage, which is vital to wine production, and wastewater treatment.

275 The accessory uses of facilities to determine if they meet the 40% or less  
276 square footage requirement of the area of the production facilities.

277 Penalties for non-compliance have been on a case-by-case basis and depend on the  
278 nature of the infraction, but have included monetary penalties and orders to limit or  
279 cease production. Generally, if the non-compliance is minor, such as a small  
280 overage in production for one year, the winery is allowed to continue its operations  
281 but is audited the following year to ensure that it is in compliance.

282 The planning and code enforcement personnel were forthcoming in addressing our  
283 inquiries. Audit reports were available upon request and the audits for 2011 -2013  
284 were reviewed. These reports provided hard data on the compliance of the audited  
285 wineries with their use permit requirements. For these audit years, the number of  
286 wineries that were out of compliance on one or more of the activities audited grew  
287 from 29% in 2011 to 40% in 2013. The non-compliant wineries were not  
288 specifically identified in the audit reports because the reports contain proprietary  
289 market information.

## 290 **FINDINGS**

291 F1. The code compliance audit does not review or inspect the following:

292 Water usage and wastewater treatment, which are essential to the production  
293 of wine.

294 The accessory uses of facilities to determine if they meet the 40% or less  
295 square footage requirement of the area of the production facilities.

296 F2. In the audit years 2011-2013, the number of wineries that were out of  
297 compliance on one of more activities audited varied from 29% to 40%. The  
298 names of the non-compliant wineries are not released to the public.

299 F3. The County's ability to expand the audit program is limited because only 30%  
300 of one code enforcement inspector has been devoted to winery audits. An  
301 additional inspector was hired in January 2015, but will have other code  
302 enforcement duties besides winery compliance inspections.

303 F4. Penalties or restriction of wineries' activities for non-compliance is  
304 determined by county officials. Since the penalties are decided on a case-by-  
305 case basis, wineries have no way of knowing the cost of code infractions.

306 F5. The lack of specificity in the winery database for actual production quantities  
307 makes it extremely difficult to determine if the growth of wineries is in  
308 conformance with the General Plan. The Planning Department is developing  
309 a more extensive winery database.

## 310 **RECOMMENDATIONS**

311 R1. By January 1, 2016, the Planning Department to increase the number of yearly  
312 winery code enforcement audits from the current rate of 20 audits per year so  
313 that every winery would be audited at least every five years or at such  
314 intervals that the Planning Commissioners or County Supervisors deem to be  
315 appropriate.

316 R2. By June 30, 2016, the Planning Department and the Planning Commissioners  
317 to develop a process for monitoring and inspecting winery water treatment  
318 and disposal. A plan for monitoring water usage should also be implemented.

319 R3. By January 1, 2016, the Planning Department to make the inspection reports  
320 of non-compliant wineries more transparent to the public in much the same  
321 fashion as health code violations of restaurants are reported.

322 R4. By June 30, 2016, the county Board of Supervisors and the Planning  
323 Commissioners to determine whether the WDO as written provides the  
324 regulatory framework necessary to maintain a winery industry that is  
325 consistent with the Agriculture Preserve Ordinance.

326 R5. By June 30, 2016, the Planning Commissioners to establish and publish a  
327 range of penalties and/or operating restrictions for non-compliance infractions  
328 of use permit requirements. Such action should encourage wineries to be  
329 more cognizant of the cost of non-compliance.

## 330 **REQUEST FOR RESPONSES**

331 Pursuant to Penal Code section 933.05, the Grand Jury requests responses as  
332 follows:

333     ▪ Napa County Board of Supervisors R1, R2, R3, R4, R5

334     Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that  
335     reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who  
336     provides information to the Grand Jury.



## Gallina, Charlene

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**From:** Gary Margadant <gsmargadant@gmail.com>  
**Sent:** Tuesday, August 02, 2016 9:44 PM  
**To:** Gallina, Charlene; Anne Cottrell; Heather Phillips; Jeri Gill; McDowell, John; Frost, Melissa; Michael Basayne; Terry Scott  
**Subject:** Planning Commission - Revised Conditions of Approval and Code Enforcement Aug 3, 2016  
**Attachments:** NVR 082815 Wine Ind Transparency.txt; Ind Ltr Enf 3 3 15.pdf; Bernadette Comments.docx; Unfair Competition in the Wine Industry.docx; 14-15 GJ Wineries Following the Rules (1).pdf; V2050 Commnt Ltr.docx

Charlene Gallina

Please include the following documents into the Record for Item 10A, **ADOPTION OF THE 2016 STANDARD CONDITIONS OF APPROVAL**

Please see the V2050 Comment Letter as a start.

Best Regards, Gary

*Gary Margadant*  
Napa Vision 2050

